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16 JEANETTE WELLS-LIPTON

17 **UNITED STATES DISTRICT COURT**

18 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

19 JEANETTE WELLS-LIPTON,
20 individually and on behalf of all others
21 similarly situated,

22 Plaintiff,

23 v.

24 JTH TAX. INC. d/b/a LIBERTY TAX
25 SERVICE,

26 Defendant.

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CASE NO.:

CLASS ACTION

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227, ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1
2 1. JEANETTE WELLS-LIPTON (hereinafter “Ms. Lipton” or “Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other
3 available legal or equitable remedies, resulting from the illegal actions of JTH TAX,
4 INC. d/b/a LIBERTY TAX SERVICE (hereinafter “LIBERTY” or “Defendant”) in
5 negligently and/or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in
6 violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”),
7 thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal
8 knowledge as to Plaintiff’s own acts and experiences, and, as to all other matters, upon
9 information and belief, including investigation conducted by her attorneys.
10

JURISDICTION AND VENUE

11
12 2. This Court has federal question jurisdiction because this case arises out of
13 violation of federal law. 47 U.S.C. § 227(b).

14 3. Venue is proper in the United States District Court for the Central District
15 of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i) Plaintiff resides
16 in the County of Los Angeles, State of California, which is within this judicial district;
17 (ii) the conduct complained of herein occurred within this judicial district; (iii) the harm
18 to Plaintiff occurred within this district; and (iv) many of the acts and transactions giving
19 rise to this action occurred in this district because Defendant:

20 (a) is authorized to conduct business in this district and has intentionally
21 availed itself of the laws and markets within this district, and is therefore also subject to
22 personal jurisdiction in this district; and

23 (b) does substantial business within this district.

PARTIES

24
25 4. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the
26 County of Los Angeles, State of California. Plaintiff is, and at all times mentioned herein
27 was, a “person” as defined by 47 U.S.C. § 153(39).
28

5. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a corporation incorporated in the State of Delaware. Defendant is, and at all times mentioned herein was, a corporation and is a “person,” as defined by 47 U.S.C. § 153(39).

9. Based on information and belief, Plaintiff alleges that Defendant utilizes bulk SPAM text messaging to send unsolicited text messages to consumers for marketing purposes, regardless of whether those consumers are customers of Defendant.

1 Hi Justin, Happy New Year! It's Tax Time! Come by & get \$50 cash!
2 Exp: 02/15/2015. Rhonda at Liberty Tax :-)

3 13. Shortly thereafter, and prior to January 21, 2015, Plaintiff responded to this
4 text message, stating:

5
6 Stop bothering me. This spam is illegal in texts! U can be sued for this

7
8 14. On or about January 21, 2015, at approximately 12:16 p.m., Defendant sent
9 an unsolicited marketing text message from telephone number (562) 239-2212 to
10 Plaintiff's cellular telephone that reads:

11 Hi Justin, Happy New Year! It's Tax Time! Come by & get \$50 cash!
12 Exp: 02/15/2015. Rhonda at Liberty Tax :-)

13 15. Shortly thereafter, and prior to receiving the next unsolicited text message
14 on January 23, 2015, as set forth in the following paragraph, Plaintiff responded to this
15 text message, stating "Stop!"

16 16. On or about January 23, 2015, at approximately 2:04 p.m., Defendant sent
17 an unsolicited marketing text message from telephone number (562) 239-2212 to
18 Plaintiff's cellular telephone that reads:

19
20 Hi Justin, Happy New Year! It's Tax Time! Come by & get \$50 cash!
21 Exp: 02/15/2015. Rhonda at Liberty Tax :-)

22 17. On or about January 28, 2015, at approximately 5:46 p.m., Defendant sent
23 an unsolicited marketing text message from telephone number (562) 239-2212 to
24 Plaintiff's cellular telephone that reads:

25
26 Hi Justin, Happy New Year! It's Tax Time! Come by & get \$50 cash!
27 Exp: 02/15/2015. Rhonda at Liberty Tax :-)

1 18. When a person calls (562) 239-2212, there is a prerecorded voice that states
2 “Thank you for calling Liberty Tax.”

3 19. At no time did Plaintiff consent to receive text messages from Defendant.

4 20. Plaintiff has never had any business relationship with Defendant.

5 21. Plaintiff never provided her cellular telephone number to Defendant for any
6 purpose.

7 22. Defendant obtained Plaintiff’s cellular telephone number by unknown
8 means.

9 23. Through these unsolicited text messages, Defendant contacted Plaintiff on
10 Plaintiff’s cellular telephone regarding an unsolicited service via an automatic telephone
11 dialing system (“ATDS”) as defined by 47 U.S.C. § 227(a)(1) and prohibited by 47
12 U.S.C. § 227(b)(1)(A).

13 24. This ATDS has the capacity to store or produce telephone numbers to be
14 called, using a random or sequential number generator.

15 25. This ATDS also has the capacity to send text messages without human
16 intervention to cellular telephone numbers stored in a list or database.

17 26. The telephone number Defendant sent text messages to was assigned to a
18 cellular telephone service for which Plaintiff incurs a charge for incoming calls and text
19 messages pursuant to 47 U.S.C. § 227(b)(1).

20 27. These text messages constitute calls using an artificial or prerecorded voice
21 pursuant to 47 U.S.C. § 227(b)(1)(A).

22 28. These text messages constitute calls made not for emergency purposes as
23 defined by 47 U.S.C. § 227(b)(1)(A).

24 29. At no time prior to sending the text message to Plaintiff alleged in ¶ 10
25 above did Defendant inform Plaintiff that Defendant would send marketing text
26 messages to Plaintiff’s cellular telephone number.

27 30. Plaintiff did not provide Defendant or its agent prior express consent to
28 receive text messages, including unsolicited marketing text messages, to her cellular

1 telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

2 31. Even if Plaintiff had provided prior express written consent to receive text
3 messages from Defendant alleged in ¶ 10 above, such consent was expressly revoked on
4 January 21, 2015 (*see* ¶ 13 above) and January 23, 2015 (*see* ¶ 15 above) when Plaintiff
5 again requested Defendant to stop sending text messages.

6 32. The unsolicited text messages by Defendant, or its agent, violated 47 U.S.C.
7 § 227(b)(1)(A)(iii).

8 **CLASS ACTION ALLEGATIONS**

9 33. Plaintiff brings this action on her behalf and on behalf of all others
10 similarly situated.

11 34. Plaintiff represents, and is a member of the Class, consisting of:

12 All persons within the United States who were sent an unsolicited text
13 message by Defendant and/or its agent and/or employee/s within the four
14 years prior to the filing of this action.

15 35. Furthermore, Plaintiff represents, and is a member of the Sub-Class,
16 consisting of:

17 All persons within the United States who were sent a text message by
18 Defendant and/or its agent and/or employee/s after the person had sent
19 Defendant a text message stating “Stop” or similar language, in response
20 to a text message from Defendant and/or its agent and/or employee/s,
21 within the four years prior to the filing of this action.

22 36. Defendant and its employees or agents are excluded from the Class and
23 Sub-Class (collectively the “Classes”). Plaintiff does not know the number of members
24 in Class, but believes the number of members in the Class is in the thousands, if not
25 more. Plaintiff does not know the number of members in Sub-Class, but believes the
26 number of members in the Sub-Class is in the hundreds, if not more. Thus, this matter
27 should be certified as a Class action to assist in the expeditious litigation of this matter.
28

1 37. Plaintiff and members of the Classes were harmed by the acts of Defendant
2 in at least the following ways: Defendant, either directly or through its agents, illegally
3 contacted Plaintiff and the Class members via their cellular telephones by using an
4 unsolicited SPAM text message/s and/or illegally contacted Plaintiff and the members of
5 the Classes via an ATDS and/or an artificial or prerecorded voice on their cellular
6 telephones, thereby causing Plaintiff and the members of the Classes to incur certain
7 cellular telephone charges or reduce cellular telephone time for which Plaintiff and the
8 members of the Classes previously paid, and invading the privacy of said Plaintiff and
9 the members of the Classes. Plaintiff and the members of the Classes were damaged
10 thereby.

11 38. This suit seeks only statutory damages and injunctive relief for recovery of
12 economic injury on behalf of the Classes, and is expressly not intended to request any
13 recovery for personal injury and claims related thereto. Plaintiff reserves the right to
14 modify or expand the Class and Sub-Class definitions to seek recovery on behalf of
15 additional persons as warranted facts are learned in further investigation and discovery.

16 39. The joinder of the members of the Classes is impractical and the disposition
17 of their claims in the Class action will provide substantial benefits both to the parties and
18 to the court. The Classes can be identified through Defendant's records or Defendant's
19 agents' records.

20 40. There is a well-defined community of interest in the questions of law and
21 fact involved affecting the parties to be represented. The questions of law and fact to the
22 Classes predominate over questions which may affect individual members of the
23 Classes, including, but not limited to, the following, and the answers to those questions
24 are apt to drive the resolution of the litigation:

25 (a) Whether, within the four years prior to the filing of the Complaint,
26 Defendant or its agents initiated any unsolicited text message/s to the members of the
27 Classes (other than a message made for emergency purposes or made with the prior
28 express consent of the called party) using any automatic dialing system and/or an

1 artificial or pre-recorded voice and/or SMS texting system, to any telephone number
2 assigned to a cellular phone service;

3 (b) Whether Plaintiff and the members of the Classes were damaged thereby,
4 and the extent of damages for such violation;

5 (c) Whether Defendant and its agents should be enjoined from engaging in such
6 conduct in the future; and

7 (d) Whether Plaintiff and the Classes are entitled to any other relief.

8 41. As a person who received at least one unsolicited marketing text message
9 without Plaintiff's prior express written consent, Plaintiff asserts claims typical of the
10 Class. As a person who received at least one unsolicited marketing text message without
11 Plaintiff's prior express written consent after Plaintiff opted out of any further text
12 messages by texting "Stop," Plaintiff asserts claims typical of the Sub-Class. Plaintiff
13 will fairly and adequately represent and protect the interests of the Classes, in that
14 Plaintiff has no interest antagonistic to any member of the Classes.

15 42. Plaintiff and the members of the Classes have all suffered irreparable harm
16 as a result of the Defendant's unlawful and wrongful conduct. Absent a class action, the
17 Classes will continue to face the potential for irreparable harm. In addition, these
18 violations of law will be allowed to proceed without remedy and Defendant will likely
19 continue such illegal conduct. Because of the size of the individual Class member's
20 claims, few, if any, members of the Classes could afford to seek legal redress for the
21 wrongs complained of herein.

22 43. Plaintiff has retained counsel experienced in handling class action claims
23 and claims involving violations of the Telephone Consumer Protection Act.

24 44. A class action is a superior method for the fair and efficient adjudication of
25 this controversy. Class-wide damages are essential to induce Defendant to comply with
26 federal law. The interest of members of the Classes in individually controlling the
27 prosecution of separate claims against Defendant is small because the maximum
28 statutory damages in an individual action for violation of privacy are minimal.

1 Management of these claims is likely to present significantly fewer difficulties than
2 those presented in many class claims.

3 45. Defendant has acted on grounds generally applicable to the Classes, thereby
4 making appropriate final injunctive relief and corresponding declaratory relief with
5 respect to the Classes as a whole.

6 46. Plaintiff anticipates providing notice to the members of the Classes by
7 direct mail notice and/or publication notice by internet website.

8 **FIRST CAUSE OF ACTION**

9 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**

10 **PROTECTION ACT**

11 **47 U.S.C. § 227 ET SEQ.**

12 47. Plaintiff incorporates by reference all of the above paragraphs of this
13 Complaint as though fully stated herein.

14 48. The foregoing acts and omissions of Defendant constitute numerous and
15 multiple negligent violations of the TCPA, including but not limited to each and every
16 one of the above-cited provisions of 47 U.S.C. § 227 et seq.

17 49. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,
18 Plaintiff and the Classes are entitled to an award of \$500.00 in statutory damages, for
19 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

20 50. Plaintiff and the Classes are also entitled to and seek injunctive relief
21 prohibiting such conduct in the future.

22 **SECOND CAUSE OF ACTION**

23 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**

24 **CONSUMER PROTECTION ACT**

25 **47 U.S.C. § 227 ET SEQ.**

26 51. Plaintiff incorporates by reference all of the above paragraphs of this
27 Complaint as though fully stated herein.

28

52. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

53. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Classes are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

54. Plaintiff and the Classes are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the Classes the following relief against Defendant:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each member of the Classes \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL
VIOLATIONS OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each member of the Classes \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

1 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
2 conduct in the future.

3 • Any other relief the Court may deem just and proper.

4 DATED: March 16, 2015

Respectfully submitted,

5 **KIESEL LAW LLP**

6
7 By: /s/ Jeffrey A. Koncius

8 Jeffrey A. Koncius

9 Melanie Meneses

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TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

DATED: March 16, 2015

Respectfully submitted,

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By: /s/ Jeffrey A. Koncius

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